



Criminal Justice Act 1988

1988 CHAPTER 33

PART XI

MISCELLANEOUS

Miscarriages of justice

133 Compensation for miscarriages of justice

- (1) Subject to subsection (2) below, when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his personal representatives, unless the non-disclosure of the unknown fact was wholly or partly attributable to the person convicted.
- (2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Secretary of State.
- (3) The question whether there is a right to compensation under this section shall be determined by the Secretary of State.
- (4) If the Secretary of State determines that there is a right to such compensation, the amount of the compensation shall be assessed by an assessor appointed by the Secretary of State.
- (5) In this section “reversed” shall be construed as referring to a conviction having been quashed—
 - (a) on an appeal out of time; or
 - (b) on a reference—
 - (i) under section 17 of the Criminal Appeal Act 1968;
 - (ii) under section 263 of the Criminal Procedure (Scotland) Act 1975; or

(iii) under section 14 of the Criminal Appeal (Northern Ireland) Act 1980.

(6) For the purposes of this section a person suffers punishment as a result of a conviction when sentence is passed on him for the offence of which he was convicted.

(7) Schedule 12 shall have effect.

Torture

134 Torture

(1) A public official or person acting in an official capacity, whatever his nationality, commits the offence of torture if in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another in the performance or purported performance of his official duties.

(2) A person not falling within subsection (1) above commits the offence of torture, whatever his nationality, if—

(a) in the United Kingdom or elsewhere he intentionally inflicts severe pain or suffering on another at the instigation or with the consent or acquiescence—

(i) of a public official; or

(ii) of a person acting in an official capacity; and

(b) the official or other person is performing or purporting to perform his official duties when he instigates the commission of the offence or consents to or acquiesces in it.

(3) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or an omission.

(4) It shall be a defence for a person charged with an offence under this section in respect of any conduct of his to prove that he had lawful authority, justification or excuse for that conduct.

(5) For the purposes of this section “lawful authority, justification or excuse” means—

(a) in relation to pain or suffering inflicted in the United Kingdom, lawful authority, justification or excuse under the law of the part of the United Kingdom where it was inflicted;

(b) in relation to pain or suffering inflicted outside the United Kingdom—

(i) if it was inflicted by a United Kingdom official acting under the law of the United Kingdom or by a person acting in an official capacity under that law, lawful authority, justification or excuse under that law;

(ii) if it was inflicted by a United Kingdom official acting under the law of any part of the United Kingdom or by a person acting in an official capacity under such law, lawful authority, justification or excuse under the law of the part of the United Kingdom under whose law he was acting; and

(iii) in any other case, lawful authority, justification or excuse under the law of the place where it was inflicted.

(6) A person who commits the offence of torture shall be liable on conviction on indictment to imprisonment for life.

135 Requirement of Attorney General's consent for prosecutions

Proceedings for an offence under section 134 above shall not be begun—

- (a) in England and Wales, except by, or with the consent of, the Attorney General; or
- (b) in Northern Ireland, except by, or with the consent of, the Attorney General for Northern Ireland.

136 Extradition under 1870 Act

- (1) Torture shall be deemed to be included in the list of extradition crimes contained in Schedule 1 to the Extradition Act 1870.
- (2) For the purposes of the Extradition Act 1870 any act or omission, wherever committed, which constitutes torture and a corresponding offence against the law of any State in the case of which the Extradition Act 1870 has been applied by an Order in Council under section 2 of that Act shall be deemed to be an offence committed within the jurisdiction of that State.

137 Extradition under Part I

- (1) Where—
 - (a) no such arrangement as is mentioned in section 2 of the Extradition Act 1870 has been made with a State which is a party to the Torture Convention; and
 - (b) general extradition arrangements have not been made with that State under Part I of this Act,

Her Majesty may by Order in Council direct that the provisions of this Act specified in subsection (2) below shall apply as between the United Kingdom and that State, subject to the limitations, restrictions, exceptions and qualifications, if any, contained in the Order, as if the Torture Convention constituted general extradition arrangements made with that State under Part I of this Act, but only in respect of the following offences—

- (i) torture;
- (ii) attempted torture;
- (iii) counselling, procuring, commanding, aiding or abetting torture; and
- (iv) being accessory before or after the fact to torture.

- (2) The provisions of this Act mentioned in subsection (1) above are—
 - (a) section 1(1) to (8);
 - (b) sections 3 to 10; and
 - (c) sections 12 to 18.
- (3) An Order in Council under this section may not provide that a court dealing with a person arrested for an offence mentioned in subsection (1) above shall not be under a duty to determine whether the evidence would be sufficient to warrant his trial if the offence had taken place within the jurisdiction of the court.
- (4) For the purposes of the provisions of this Act specified in subsection (2) above, in their application by virtue of an Order in Council under this section as between the United Kingdom and any other State, any act or omission, wherever it takes place, which constitutes—
 - (a) an offence mentioned in subsection (1) above; and

(b) an offence against the law of that State,
shall be deemed to be an offence committed within the territory of that State.

- (5) In this section “the Torture Convention” means the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations on 10th December 1984.

138 Application to Channel Islands, Isle of Man and colonies

- (1) Her Majesty may by Order in Council make provision for extending sections 134 and 135 above, with such modifications and exceptions as may be specified in the Order, to any of the Channel Islands, the Isle of Man or any colony.
- (2) Sections 17 and 22 of the Extradition Act 1870 shall extend to section 136 above.
- (3) Sections 19 and 20 above shall extend to section 137 above.

Articles with blades or points and offensive weapons

139 Offence of having article with blade or point in public place

- (1) Subject to subsections (4) and (5) below, any person who has an article to which this section applies with him in a public place shall be guilty of an offence.
- (2) Subject to subsection (3) below, this section applies to any article which has a blade or is sharply pointed except a folding pocketknife.
- (3) This section applies to a folding pocketknife if the cutting edge of its blade exceeds 3 inches.
- (4) It shall be a defence for a person charged with an offence under this section to prove that he had good reason or lawful authority for having the article with him in a public place.
- (5) Without prejudice to the generality of subsection (4) above, it shall be a defence for a person charged with an offence under this section to prove that he had the article with him—
- (a) for use at work;
 - (b) for religious reasons; or
 - (c) as part of any national costume.
- (6) A person guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In this section “public place” includes any place to which at the material time the public have or are permitted access, whether on payment or otherwise.
- (8) This section shall not have effect in relation to anything done before it comes into force.

140 Extension of constable’s power to stop and search

- (1) In section 1 of the Police and Criminal Evidence Act 1984 (powers of constable to stop and search)—

- (a) the words “or any article to which subsection (8A) below applies” shall be inserted—
 - (i) in subsection (2)(a), after the word “articles”; and
 - (ii) at the end of subsection (3);
 - (b) in subsection (6), after the word “article”, in the second place where it occurs, there shall be inserted the words “or an article to which subsection (8A) below applies”; and
 - (c) the following subsection shall be inserted after subsection (8)—

“(8A) This subsection applies to any article in relation to which a person has committed, or is committing or is going to commit an offence under section 139 of the Criminal Justice Act 1988.”.
- (2) In section 5(2)(a)(ii) of that Act (annual reports to contain total numbers of searches for offensive weapons) after the word “weapons” there shall be inserted the words “or articles to which section 1(8A) above applies”.

141 Offensive weapons

- (1) Any person who manufactures, sells or hires or offers for sale or hire, exposes or has in his possession for the purpose of sale or hire, or lends or gives to any other person, a weapon to which this section applies shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.
- (2) The Secretary of State may by order made by statutory instrument direct that this section shall apply to any description of weapon specified in the order except—
 - (a) any weapon subject to the Firearms Act 1968; and
 - (b) crossbows.
- (3) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and has been approved by a resolution of each House of Parliament.
- (4) The importation of a weapon to which this section applies is hereby prohibited.
- (5) It shall be a defence for any person charged in respect of any conduct of his relating to a weapon to which this section applies—
 - (a) with an offence under subsection (1) above; or
 - (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979 (improper importation),to prove that his conduct was only for the purposes of functions carried out on behalf of the Crown or of a visiting force.
- (6) In this section the reference to the Crown includes the Crown in right of Her Majesty’s Government in Northern Ireland; and
 - “visiting force” means any body, contingent or detachment of the forces of a country—
 - (a) mentioned in subsection (1)(a) of section 1 of the Visiting Forces Act 1952; or
 - (b) designated for the purposes of any provision of that Act by Order in Council under subsection (2) of that section,

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which is present in the United Kingdom (including United Kingdom territorial waters) or in any place to which subsection (7) below applies on the invitation of Her Majesty's Government in the United Kingdom.

- (7) This subsection applies to any place on, under or above an installation in a designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation.
- (8) It shall be a defence for any person charged in respect of any conduct of his relating to a weapon to which this section applies—
 - (a) with an offence under subsection (1) above; or
 - (b) with an offence under section 50(2) or (3) of the Customs and Excise Management Act 1979,
 to prove that the conduct in question was only for the purposes of making the weapon available to a museum or gallery to which this subsection applies.
- (9) If a person acting on behalf of a museum or gallery to which subsection (8) above applies is charged with hiring or lending a weapon to which this section applies, it shall be a defence for him to prove that he had reasonable grounds for believing that the person to whom he lent or hired it would use it only for cultural, artistic or educational purposes.
- (10) Subsection (8) above applies to a museum or gallery only if it does not distribute profits.
- (11) In this section “museum or gallery” includes any institution which has as its purpose, or one of its purposes, the preservation, display and interpretation of material of historical, artistic or scientific interest and gives the public access to it.
- (12) This section shall not have effect in relation to anything done before it comes into force.
- (13) In the application of this section to Northern Ireland the reference in subsection (2) above to the Firearms Act 1968 shall be construed as a reference to the Firearms (Northern Ireland) Order 1981.

142 Power of justice of the peace to authorise entry and search of premises for offensive weapons

- (1) If on an application made by a constable a justice of the peace (including, in Scotland, the sheriff) is satisfied that there are reasonable grounds for believing—
 - (a) that there are on premises specified in the application—
 - (i) knives such as are mentioned in section 1(1) of the Restriction of Offensive Weapons Act 1959; or
 - (ii) weapons to which section 141 above applies; and
 - (b) that an offence under section 1 of the Restriction of Offensive Weapons Act 1959 or section 141 above has been or is being committed in relation to them; and
 - (c) that any of the conditions specified in subsection (3) below applies,
 he may issue a warrant authorising a constable to enter and search the premises.
- (2) A constable may seize and retain anything for which a search has been authorised under subsection (1) above.

- (3) The conditions mentioned in subsection (1)(b) above are—
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the knives or weapons to which the application relates;
 - (c) that entry to the premises will not be granted unless a warrant is produced;
 - (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.
- (4) Subsection (1)(a)(i) shall be omitted in the application of this section to Northern Ireland.

Serious fraud

143 Assistance to Isle of Man and Channel Islands

In subsection (1) of section 2 of the Criminal Justice Act 1987 (investigation powers of Director of Serious Fraud Office) after the word “above,” there shall be inserted the words “or, on a request made by the Attorney General of the Isle of Man, Jersey or Guernsey, under legislation corresponding to that section and having effect in the Island whose Attorney General makes the request,”.

144 Transferred charges

- (1) The Criminal Justice Act 1987 shall be amended as follows.
- (2) In section 4(1) (under which, on a notice of transfer in a fraud case, the functions of a magistrates' court, subject to certain exceptions, cease in relation to the case) after “5(3)” there shall be inserted “, (7A)”.
- (3) In section 5 (notices of transfer—procedure)—
- (a) in subsection (4), for the words “without the person charged” there shall be substituted the words “in relation to a person charged without his”;
 - (b) in subsection (5)(a), for the word “charged” there shall be substituted the words “in question”;
 - (c) in subsection (6)—
 - (i) for the words “the person charged” there shall be substituted the words “a person to whom it relates”; and
 - (ii) for the words “examining justices” there shall be substituted the words “a magistrates' court”;
 - (d) in subsection (7)—
 - (i) for the word “charged” there shall be substituted the words “to whom the notice of transfer relates”; and
 - (ii) for the words “examining justices” there shall be substituted the words “a magistrates' court”;
 - (e) in subsection (8)(b), for the words “whose written statement is tendered in evidence for the purposes of the notice of transfer” there shall be substituted the words “indicated in the notice of transfer as a proposed witness;” and
 - (f) in subsection (9)(a)—

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- (i) in sub-paragraph (i), for the words “the person charged” there shall be substituted the words “any person to whom the notice of transfer relates”; and
 - (ii) in sub-paragraph (ii), after the word “the”, in the second place where it occurs, there shall be inserted the words “place specified by the notice of transfer as the”.
- (4) The following subsection shall be inserted after section 5(7)—
 - “(7A) If the notice states that the requirement is to continue, when a person to whom the notice relates appears before the magistrates' court, the court shall have—
 - (a) the powers and duty conferred on a magistrates' court by subsection (3) above, but subject as there provided; and
 - (b) power to enlarge, in the surety's absence, a recognizance conditioned in accordance with section 128(4)(a) of the Magistrates' Courts Act 1980 so that the surety is bound to secure that the person charged appears also before the Crown Court.”.
- (5) The following section shall be substituted for section 6—

“6 Applications for dismissal

- (1) Where notice of transfer has been given, any person to whom the notice relates, at any time before he is arraigned (and whether or not an indictment has been preferred against him), may apply orally or in writing to the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial for the charge, or any of the charges, in the case to be dismissed; and the judge shall dismiss a charge (and accordingly quash a count relating to it in any indictment preferred against the applicant) if it appears to him that the evidence against the applicant would not be sufficient for a jury properly to convict him.
- (2) No oral application may be made under subsection (1) above unless the applicant has given the Crown Court sitting at the place specified by the notice of transfer as the proposed place of trial written notice of his intention to make the application.
- (3) Oral evidence may be given on such an application only with the leave of the judge or by his order, and the judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.
- (4) If the judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but he does not do so, the judge may disregard any document indicating the evidence that he might have given.
- (5) Dismissal of the charge, or all the charges, against the applicant shall have the same effect as a refusal by examining magistrates to commit for trial, except that no further proceedings may be brought on a dismissed charge except by means of the preferment of a voluntary bill of indictment.
- (6) Crown Court Rules may make provision for the purposes of this section and, without prejudice to the generality of this subsection—

- (a) as to the time or stage in the proceedings at which anything required to be done is to be done (unless the court grants leave to do it at some other time or stage);
- (b) as to the contents and form of notices or other documents;
- (c) as to the manner in which evidence is to be submitted; and
- (d) as to persons to be served with notices or other material.”.

145 Power to petition for winding-up etc. on information obtained on investigation by Director of Serious Fraud Office

The words “or section 2 of the Criminal Justice Act 1987” shall be inserted—

- (a) in section 440 of the Companies Act 1985, after the words “that Act”;
- (b) in section 8(1) of the Company Directors Disqualification Act 1986, after the words “the Financial Services Act 1986”, in the second place where they occur; and
- (c) in Article 433 of the Companies (Northern Ireland) Order 1986, after the words “that Act”.

Evidence before Service courts

146 Evidence before courts-martial etc

Schedule 13 to this Act shall have effect in relation to evidence before courts-martial, disciplinary courts constituted under section 50 of the Naval Discipline Act 1957, the Courts-Martial Appeal Court and Standing Civilian Courts.

Amendments of Police and Criminal Evidence Act 1984 etc.

147 Searches of detained persons

In section 54 of the Police and Criminal Evidence Act 1984 (searches of detained persons)—

- (a) the following paragraph shall be substituted for subsection (1)(b)—
 - “(b) arrested at the station or detained there under section 47(5) above.”; and
- (b) the following subsections shall be inserted after subsection (6)—
 - “(6A) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in subsection (4)(a) above.
 - (6B) Subject to subsection (6C) below, a constable may seize and retain, or cause to be seized and retained, anything found on such a search.
 - (6C) A constable may only seize clothes and personal effects in the circumstances specified in subsection (4) above.”.

148 Computer data about fingerprints

- (1) The following subsection shall be substituted for subsection (5) of section 64 of the Police and Criminal Evidence Act 1984 (destruction of fingerprints etc.)—

“(5) If fingerprints are destroyed—

- (a) any copies of the fingerprints shall also be destroyed; and
- (b) any chief officer of police controlling access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.”.

- (2) The following subsections shall be inserted after subsection (6) of that section—

“(6A) If—

- (a) subsection (5)(b) above falls to be complied with; and
- (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him, not later than the end of the period of three months beginning with the day on which he asks for it, by the responsible chief officer of police or a person authorised by him or on his behalf for the purposes of this section.

(6B) In this section—

“chief officer of police” means the chief officer of police for an area mentioned in Schedule 8 to the Police Act 1964; and

“the responsible chief officer of police” means the chief officer of police in whose area the computer data were put on to the computer.”.

149 Body samples— Northern Ireland

Schedule 14 shall have effect with respect to the taking of samples from persons in Northern Ireland in connection with the investigation of offences to which it applies.

*Provisions relating to Customs and Excise***150 Bail for persons in customs detention**

At the end of section 114(2)(b) of the Police and Criminal Evidence Act 1984 there shall be added the words “and

- (c) that in relation to customs detention (as defined in any order made under this subsection) the Bail Act 1976 shall have effect as if references in it to a constable were references to an officer of Customs and Excise of such grade as may be specified in the order.”.

151 Customs and Excise power of arrest

(1) If—

(a) a person—

- (i) has been released on bail in criminal proceedings for an offence falling within subsection (4) below; and
- (ii) is under a duty to surrender into customs detention; and

- (b) an officer of Customs and Excise has reasonable grounds for believing that that person is not likely to surrender to custody,
he may be arrested without warrant by an officer of Customs and Excise.
- (2) A person arrested in pursuance of subsection (1) above shall be brought as soon as practicable and in any event within 24 hours after his arrest before a justice of the peace for the petty sessions area in which he was arrested.
- (3) In reckoning for the purposes of subsection (2) above any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.
- (4) The offences that fall within this subsection are—
 - (a) an offence against section 5(2) of the Misuse of Drugs Act 1971 (possession of controlled drugs); and
 - (b) a drug trafficking offence.
- (5) In this section and section 152 below “drug trafficking offence” means a drug trafficking offence as defined by section 38(1) of the Drug Trafficking Offences Act 1986 other than an offence under section 24 of that Act (assisting another to retain the benefit of drug trafficking).

152 Remands of suspected drug offenders to customs detention

- (1) Subject—
 - (a) to subsection (2) below; and
 - (b) to section 4 of the Bail Act 1976,where—
 - (i) a person is brought before a magistrates' court on a charge of an offence against section 5(2) of the Misuse of Drugs Act 1971 or a drug trafficking offence; and
 - (ii) the court has power to remand him,it shall have power, if it considers it appropriate to do so, to remand him to customs detention, that is to say, commit him to the custody of a customs officer for a period not exceeding 192 hours.
- (2) This section does not apply where a charge is brought against a person under the age of 17.
- (3) In the application of this section to Northern Ireland, for the words from the beginning of subsection (1) above to “1976” there shall be substituted the words “Subject to subsection (2) below,”.
- (4) The definition of “drug trafficking offence” in section 38(1) of the Drug Trafficking Offences Act 1986 shall extend to Northern Ireland for the purposes of this section but shall have effect in relation to Northern Ireland as if—
 - (a) the reference in paragraph (e) to section 1 of the Criminal Law Act 1977 were a reference to Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983; and
 - (b) the reference in paragraph (f) to section 1 of the Criminal Attempts Act 1981 were a reference to Article 3 of that Order.

Bail and custody

153 Court to give reasons for granting bail to a person accused of serious offence

The following paragraph shall be inserted after paragraph 9 (decisions as to grant or refusal of bail) of Part I of Schedule 1 to the Bail Act 1976—

“9A (1) If—

- (a) the defendant is charged with an offence to which this paragraph applies; and
- (b) representations are made as to any of the matters mentioned in paragraph 2 of this Part of this Schedule; and
- (c) the court decides to grant him bail,

the court shall state the reasons for its decision and shall cause those reasons to be included in the record of the proceedings.

(2) The offences to which this paragraph applies are—

- (a) murder;
- (b) manslaughter;
- (c) rape;
- (d) attempted murder; and
- (e) attempted rape.”.

154 Decisions where bail refused on previous hearing

The following new Part shall be inserted after Part II of Schedule 1 to the Bail Act 1976—

“PART IIA

DECISIONS WHERE BAIL REFUSED ON PREVIOUS HEARING

- 1 If the court decides not to grant the defendant bail, it is the court’s duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.
- 2 At the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
- 3 At subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.”.

155 Remands in custody for more than eight days

- (1) The following section shall be inserted after section 128 of the Magistrates' Courts Act 1980—

“128A Remands in custody for more than eight days

- (1) The Secretary of State may by order made by statutory instrument provide that this section shall have effect—
 - (a) in an area specified in the order; or
 - (b) in proceedings of a description so specified,in relation to any accused person (“the accused”) who has attained the age of 17.
 - (2) A magistrates' court may remand the accused in custody for a period exceeding 8 clear days if—
 - (a) it has previously remanded him in custody for the same offence; and
 - (b) he is before the court,but only if, after affording the parties an opportunity to make representations, it has set a date on which it expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place, and only—
 - (i) for a period ending not later than that date; or
 - (ii) for a period of 28 clear days,whichever is the less.
 - (3) Nothing in this section affects the right of the accused to apply for bail during the period of the remand.
 - (4) A statutory instrument containing an order under this section shall not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House.”.
- (2) After paragraph 9A of Schedule 1 to the Bail Act 1976 there shall be inserted—

“Cases under section 128A of Magistrates' Courts Act 1980

- 9B Where the court is considering exercising the power conferred by section 128A of the Magistrates' Courts Act 1980 (power to remand in custody for more than 8 clear days), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.”.

Appeals

156 Appeals to Crown Court

In paragraph (a) of section 48(2) of the Supreme Court Act 1981 (which sets out the powers of the Crown Court on the termination of the hearing of an appeal) for the words “the decision appealed against” there shall be substituted the words “any part of the decision appealed against, including a determination not to impose a separate penalty in respect of an offence”.

157 **Groundless appeals and applications for leave to appeal**

The following section shall be substituted for section 20 of the Criminal Appeal Act 1968—

“20 Disposal of groundless appeal or application for leave to appeal

If it appears to the registrar that a notice of appeal or application for leave to appeal does not show any substantial ground of appeal, he may refer the appeal or application for leave to the Court for summary determination; and where the case is so referred the Court may, if they consider that the appeal or application for leave is frivolous or vexatious, and can be determined without adjourning it for a full hearing, dismiss the appeal or application for leave summarily, without calling on anyone to attend the hearing or to appear for the Crown thereon.”.

Reports of criminal proceedings

158 **Anonymity in rape etc. cases**

- (1) The Sexual Offences (Amendment) Act 1976 shall be amended as follows.
- (2) The following subsections shall be substituted for subsection (1) of section 4 (anonymity of complainants in rape etc. cases)—

“(1) Except as authorised by a direction given in pursuance of this section—

- (a) after an allegation that a woman has been the victim of a rape offence has been made by the woman or by any other person, neither the woman’s name nor her address nor a still or moving picture of her shall during her lifetime—

- (i) be published in England and Wales in a written publication available to the public; or

- (ii) be broadcast or included in a cable programme in England and Wales,

if that is likely to lead members of the public to identify her as an alleged victim of such an offence; and

- (b) after a person is accused of a rape offence, no matter likely to lead members of the public to identify a woman as the complainant in relation to that accusation shall during her lifetime—

- (i) be published in England and Wales in a written publication available to the public; or

- (ii) be broadcast or included in a cable programme in England and Wales;

but nothing in this subsection prohibits the publication or broadcasting or inclusion in a cable programme of matter consisting only of a report of criminal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with the offence.

(1A) In subsection (1) above “picture” includes a likeness however produced.”.

- (3) The following subsections shall be inserted after subsection (5) of that section—

“(5A) Where a person is charged with an offence under subsection (5) of this section in respect of the publication or broadcast of any matter or the inclusion of any matter in a cable programme, it shall be a defence, subject to subsection (5B) below, to prove that the publication, broadcast or cable programme in which the matter appeared was one in respect of which the woman had given written consent to the appearance of matter of that description.

(5B) Written consent is not a defence if it is proved that any person interfered unreasonably with the woman’s peace or comfort with intent to obtain the consent.”.

(4) In subsection (3) of that section—

- (a) the words “before the Crown Court at which a person is charged with a rape offence” and “relating to the complainant” shall cease to have effect; and
- (b) for the words “an acquittal of a defendant at” there shall be substituted the words “the outcome of”.

(5) Section 6 (anonymity of defendants in rape etc. cases) shall cease to have effect.

(6) In section 7(2), in the definition of a “rape offence”, for the words “and incitement to rape” there shall be substituted the words, “incitement to rape, conspiracy to rape and burglary with intent to rape”.

159 Crown Court proceedings— orders restricting or preventing reports or restricting public access

(1) A person aggrieved may appeal to the Court of Appeal, if that court grants leave, against—

- (a) an order under section 4 or 11 of the Contempt of Court Act 1981 made in relation to a trial on indictment;
- (b) any order restricting the access of the public to the whole or any part of a trial on indictment or to any proceedings ancillary to such a trial; and
- (c) any order restricting the publication of any report of the whole or any part of a trial on indictment or any such ancillary proceedings;

and the decision of the Court of Appeal shall be final.

(2) Subject to Rules of Court, the jurisdiction of the Court of Appeal under this section shall be exercised by the criminal division of the Court, and references to the Court of Appeal in this section shall be construed as references to that division.

(3) On an application for leave to appeal under this section a judge shall have power to give such directions as appear to him to be appropriate and, without prejudice to the generality of this subsection, power—

- (a) to order the production in court of any transcript or note of proceedings or other document;
- (b) to give directions as to persons who are to be parties to the appeal or who may be parties to it if they wish and as to service of documents on any person;

and the Court of Appeal shall have the same powers as the single judge.

(4) Subject to Rules of Court made by virtue of subsection (6) below, any party to an appeal under this section may give evidence before the Court of Appeal orally or in writing.

Status: This is the original version (as it was originally enacted).

- (5) On the hearing of an appeal under this section the Court of Appeal shall have power—
 - (a) to stay any proceedings in any other court until after the appeal is disposed of;
 - (b) to confirm, reverse or vary the order complained of; and
 - (c) to make such order as to costs as it thinks fit.
- (6) Without prejudice to the generality of section 84 of the Supreme Court Act 1981, Rules of Court may make in relation to trials satisfying specified conditions special provision as to the practice and procedure to be followed in relation to hearings in camera and appeals from orders for such hearings and may in particular, but without prejudice to the generality of this subsection, provide that subsection (4) above shall not have effect.
- (7) In the application of this section to Northern Ireland—
 - (a) subsection (2) shall be omitted; and
 - (b) the reference in subsection (6) to section 84 of the Supreme Court Act 1981 shall be construed as a reference to sections 52 and 55 of the Judicature (Northern Ireland) Act 1978.

Possession of indecent photograph of child

160 Summary offence of possession of indecent photograph of child

- (1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.
- (2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—
 - (a) that he had a legitimate reason for having the photograph in his possession; or
 - (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
 - (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
- (3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.
- (4) Sections 1(3), 2(3), 3 and 7 of the Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.
- (5) Possession before this section comes into force is not an offence.

161 Possession of indecent photographs of children: Scotland

- (1) The following section shall be inserted after section 52 of the Civic Government (Scotland) Act 1982—

“52A Possession of indecent photographs of children

- (1) It is an offence for a person to have any indecent photograph of a child (meaning in this section a person under the age of 16) in his possession.

- (2) Where a person is charged with an offence under subsection (1), it shall be a defence for him to prove—
 - (a) that he had a legitimate reason for having the photograph in his possession; or
 - (b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or
 - (c) that the photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.
 - (3) A person shall be liable on summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.
 - (4) Subsections (2) and (8) of section 52 of this Act shall have effect for the purposes of this section as they have for the purposes of that section.”.
- (2) Section 52A of that Act shall not have effect in relation to anything done before it comes into force.

Video recordings

162 Enforcement of Video Recordings Act 1984

The following section shall be inserted after section 16 of the Video Recordings Act 1984—

“16A Enforcement

- (1) The functions of a local weights and measures authority include the enforcement in their area of this Act.
- (2) The following provisions of the Trade Descriptions Act 1968 apply in relation to the enforcement of this Act by such an authority as in relation to the enforcement of that Act—
 - section 27 (power to make test purchases),
 - section 28 (power to enter premises and inspect and seize goods and documents),
 - section 29 (obstruction of authorised officers), and
 - section 33 (compensation for loss, &c. of goods seized under s. 28).
- (3) Nothing in this section shall be taken as authorising a local weights and measures authority in Scotland to initiate proceedings for an offence.
- (4) Subsection (1) above does not apply in relation to the enforcement of this Act in Northern Ireland, but the functions of the Department of Economic Development include the enforcement of this Act in Northern Ireland.

For that purpose the provisions of the Trade Descriptions Act 1968 specified in subsection (2) apply as if for the references to a local weights and measures authority and any officer of such an authority there were substituted references to that Department and any of its officers.

Status: This is the original version (as it was originally enacted).

- (5) Any enactment which authorises the disclosure of information for the purpose of facilitating the enforcement of the Trade Descriptions Act 1968 shall apply as if the provisions of this Act were contained in that Act and as if the functions of any person in relation to the enforcement of this Act were functions under that Act.”.

Restitution orders

163 Application of restitution orders to the Crown

The following subsection shall be added at the end of section 28 of the Theft Act 1968 —

- “(7) An order may be made under this section in respect of money owed by the Crown.”.

Magistrates' courts areas and officers

164 Alteration of names of petty sessions areas

- (1) The Justices of the Peace Act 1979 shall be amended as follows.
- (2) The following sections shall be inserted after section 24—

“24A Alteration of names of petty sessions areas outside inner London area

- (1) Subject to the provisions of this and the next section, a magistrates' courts committee for an area mentioned in section 19(2) above other than the City of London may at any time submit to the Secretary of State a draft order altering the name of the petty sessions area for which they are the committee or, if they are the committee for more than one petty sessions area, the name of any of those areas.
- (2) Subject to the provisions of this and the next following section, where such a committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.
- (3) Any order under this section may contain transitional and other consequential provisions.

24B Procedure relating to s. 24A

- (1) Before submitting to the Secretary of State a draft order under section 24A of this Act, a magistrates' courts committee—
 - (a) shall consult the council of the non-metropolitan county, metropolitan district or outer London borough concerned and the magistrates of the petty sessions area to which their proposals relate; and
 - (b) after complying with paragraph (a) above, shall send a copy of their proposals to every interested authority and take into consideration any

objections made in the prescribed manner and within the prescribed time.

- (2) A magistrates' courts committee submitting to the Secretary of State a draft order under section 24A of this Act shall comply with such requirements (if any) as to notice as may be prescribed; and the Secretary of State, before making an order under that section otherwise than in accordance with a draft submitted to him by the magistrates' court committee, shall send a copy of his proposals to the committee, to the council of the non-metropolitan county, metropolitan district or outer London borough concerned and, if a non-metropolitan county is concerned, every interested authority.
 - (3) Before making any order under section 24A of this Act the Secretary of State shall take into consideration any objections made in the prescribed manner and within the prescribed time, and may cause a local inquiry to be held.
 - (4) For the purposes of this section—
 - (a) “interested authority”, in relation to any order or draft order concerning a non-metropolitan county, means the council of any district in the county which is wholly or partly included in the area to which the order or draft order relates; and
 - (b) an order shall be deemed to be made in accordance with a draft order if either it is made in terms of the draft order or the departures from the draft order do not, in the opinion of the Secretary of State, effect important alterations in the draft order.”.
- (3) The following section shall be inserted after section 36—

“36A Alteration of names of petty sessions areas in inner London area

- (1) The committee of magistrates may at any time submit to the Secretary of State a draft order altering the name of any petty sessions area in the inner London area.
- (2) Where the committee submit a draft order to the Secretary of State under this section, he may by statutory instrument make the order either in the terms of the draft or with such modifications as he thinks fit.
- (3) Any order under this section may contain transitional and other consequential provisions.”.

165 Officers of inner London magistrates' courts

- (1) Section 37 of the Justices of the Peace Act 1979 shall be amended as follows.
- (2) In paragraph (b) of subsection (1), after “such” insert “senior deputy chief clerks,”.
- (3) At the end of that subsection add “and, where there is only one, designate him”.
- (4) In subsection (3), after “clerks”, in the first place where it occurs, insert “senior deputy chief clerks”.

Costs and expenses

166 Costs and expenses of prosecution witnesses and other persons

- (1) Section 14 of the Prosecution of Offences Act 1985 (control of certain fees and expenses etc. paid by Crown Prosecution Service) shall be amended as follows—
 - (a) at the end of paragraph (b) of subsection (1) there shall be added the words “and, subject to subsection (1A) below, of any other person who in the opinion of the Service necessarily attends for the purpose of the case otherwise than to give evidence”;
 - (b) the following subsections shall be inserted after that subsection—
 - “(1A) The power conferred on the Attorney General by subsection (1)(b) above only relates to the costs and expenses of an interpreter if the interpreter is required because of the lack of English of a person attending to give evidence at the instance of the Service.
 - (1B) In subsection (1)(b) above “attending” means attending at the court or elsewhere.”; and
 - (c) the following subsection shall be inserted after subsection (2)—
 - “(3) Regulations made under subsection (1)(b) above may provide that scales or rates of costs and expenses shall be determined by the Attorney General with the consent of the Treasury.”.
- (2) In paragraph (a) of section 19(3) of that Act (regulations as to payment out of central funds) after the word “proceedings” there shall be inserted the words “, and any other person who in the opinion of the court necessarily attends for the purpose of the proceedings otherwise than to give evidence,”.
- (3) The following subsection shall be inserted after that subsection—
 - “(3A) In subsection (3)(a) above “attendance” means attendance at the court or elsewhere.”.
- (4) The amendments made by subsections (2) and (3) above shall be deemed to have come into force on 1st October 1986.
- (5) In Schedule 1 to the Criminal Justice Act 1987 (control of certain fees and expenses etc. paid by Serious Fraud Office)—
 - (a) in sub-paragraph (1)(b) of paragraph 8, for the word “to” in the third place it occurs there shall be substituted the word “of”; and
 - (b) the following sub-paragraph shall be inserted after sub-paragraph (4) of that paragraph—
 - “(5) In sub-paragraph (1)(b) above “attends” means attends at the court or elsewhere.”

Acquisition of easements etc.

167 Acquisition of easements etc. under Prison Act 1952

The power to purchase land conferred on the Secretary of State by section 36 of the Prison Act 1952 (acquisition of land for prisons) shall include and be deemed always

to have included power to purchase easements and other rights over land, including easements and other rights not previously in existence.